



**U.S. Citizenship  
and Immigration  
Services**

**Non-Precedent Decision of the  
Administrative Appeals Office**

MATTER OF C- LP

DATE: NOV. 3, 2016

APPEAL OF NEBRASKA SERVICE CENTER DECISION

PETITION: FORM I-140, IMMIGRANT PETITION FOR ALIEN WORKER

The Petitioner, a manufacturer, distributor, and servicer of medical devices and healthcare products, seeks to permanently employ the Beneficiary as an engineering manager. It requests classification of the Beneficiary as a member of the professions holding an advanced degree under the second preference immigrant category. *See* Immigration and Nationality Act (the Act) section 203(b)(2)(A), 8 U.S.C. § 1153(b)(2)(A). This classification allows a U.S. employer to sponsor a professional with an advanced degree for lawful permanent resident status.

On March 16, 2016, the Director, Nebraska Service Center, denied the petition. Finding that the record did not establish the Petitioner as a successor in interest to the company that filed the accompanying labor certification application, the Director concluded that the certification was invalid.

The matter is now before us on *de novo* appellate review. The Petitioner asserts a successor-in-interest relationship between itself and the labor certification employer. But the record indicates that a foreign affiliate and the parent company of the Petitioner, not the Petitioner itself, acquired the original employer's business. We will therefore dismiss the appeal.

**I. LAW AND ANALYSIS**

A petition for an advanced degree professional must be accompanied by a valid, individual labor certification, an application for Schedule A designation, or documentation of a beneficiary's qualifications for a shortage occupation. 8 C.F.R. § 204.5(k)(4)(i). A labor certification remains valid only for the particular job opportunity, foreign national, and geographic area of intended employment stated on it. 20 C.F.R. § 656.30(c)(2).

A petitioner other than an employer stated on an accompanying labor certification may use the certification only if it establishes itself as the successor in interest to the employer. *See Matter of Dial Auto Repair Shop, Inc.*, 19 I&N Dec. 481, 482-83 (Comm'r 1986). A successor in interest must possess the essential rights and obligations necessary to carry on the original employer's business. *Id.*

To establish a successorship, a petitioner must: document the transaction(s) by which it acquired interests in the predecessor; demonstrate that the job opportunity remains the same as indicated on the accompanying labor certification; and otherwise establish eligibility for the petition's approval, including the abilities of itself and the predecessor to pay the proffered wage. *Id.*

In the instant case, an ETA Form 9089, Application for Permanent Employment Certification (labor certification), approved by the U.S. Department of Labor, accompanies the petition. The labor certification contains an offer of employment to the Beneficiary as an engineering manager by a company other than the Petitioner.

The Petitioner asserts itself as a successor in interest to the labor certification employer. The Petitioner submitted evidence that, on February 27, 2014, its Luxembourg affiliate effectively acquired the employer.<sup>1</sup> Copies of an agreement, SEC filings, news articles, and other documentation indicate that a subsidiary of the affiliate merged with the labor certification employer's parent company and subsidiaries. The subsidiary of the Petitioner's affiliate then ceased to exist, leaving the surviving entity a wholly owned subsidiary of the affiliate, which in turn is wholly owned by the Petitioner's parent company.<sup>2</sup>

The Petitioner's evidence establishes its foreign affiliate and parent company as successors in interest to the labor certification employer. But the record does not establish the Petitioner itself as a successor to the original employer.

A petitioner seeking successor status must "fully explain the manner by which [it] took over the business" of the predecessor and provide "a copy of the contract or agreement between the two entities." *Dial Auto*, 19 I&N Dec. at 482. The instant record does not demonstrate that the Petitioner itself took over the predecessor's business. The agreement submitted by the Petitioner is between the parent of the labor certification company and the Petitioner's affiliate; the Petitioner is not a party to the agreement, nor is it mentioned in the pact.

The record contains IRS Forms W-2, Wage and Tax Statements, indicating the Petitioner's employment of the Beneficiary in 2014 and 2015. But these payroll records do not establish the Petitioner's acquisition of the essential rights and obligations to carry on the business of the labor certification employer as required for successor-in-interest status.

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<sup>1</sup> At the time of the acquisition, public records indicate that the Petitioner and the Luxembourg company were both wholly owned subsidiaries of the same parent. See U.S. Secs. & Exchange Comm'n, Company Filings Search, at <https://www.sec.gov/edgar/searchedgar/companysearch.html> (accessed Aug. 2, 2016). The Petitioner and the Luxembourg company were therefore affiliates. See 8 C.F.R. § 204.5(j)(2) (defining the term "affiliate" for immigrant visa purposes to mean "[o]ne of two subsidiaries both of which are owned and controlled by the same parent or individual").

<sup>2</sup> The Director found that the record lacked evidence of the labor certification employer's relationship to its parent company and the Petitioner's relationship to its affiliate. Because public records establish those relationships, however, we will withdraw those findings. See U.S. Secs. & Exchange Comm'n, Company Filings Search, at <https://www.sec.gov/edgar/searchedgar/companysearch.html> (accessed Aug. 2, 2016).

The Petitioner asserts itself as a successor in interest “through” its parent company, which controls the surviving entity of the merger. The Petitioner reasons that the business transactions conducted by its parent company are, in effect, its own transaction, simply by its status as an affiliate. But, pursuant to *Dial Auto*, possession of the essential rights and obligations of the labor certification employer must be established by the individual petitioning entity.

In the instant case, the record establishes that an affiliate and parent company of the Petitioner acquired interests in the labor certification employer. The record does not establish that the individual Petitioner acquired an interest in the employer. The successor relationships of the Petitioner’s affiliate and parent company to the employer do not establish the successorship of the individual Petitioner.<sup>3</sup>

## II. CONCLUSION

The record does not establish a successor-in-interest relationship between the Petitioner and the labor certification employer. In the absence of an application for Schedule A designation or documentation of the Beneficiary’s qualifications for a shortage occupation, we will affirm the Director’s decision and dismiss the appeal for lack of a valid labor certification.

The petition will remain denied for the above-stated reason. In visa petition proceedings, a petitioner bears the burden of establishing eligibility for the requested benefit. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, the instant Petitioner did not meet that burden.

**ORDER:** The appeal is dismissed.

Cite as *Matter of C- LP*, ID# 12051 (AAO Nov. 3, 2016)

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<sup>3</sup> The Petitioner indicates that, in 2015, another company acquired it, its parent, and its affiliates. Because the record does not establish the Petitioner as a successor in interest to the labor certification employer, however, we need not analyze the Petitioner’s acquisition in 2015.